

Atty Dkt No. GDG01.US1
USSN 09/777,418
PATENT

Remarks

Rejection under §103(a)

Claims 1-3, 8-10, 19 and 21-23 were rejected as obvious under §103(a) over Institutional Distribution (Dialog #05176267) ("Institutional") and Burckhardt, Star Tribune 11/22/89 ("Burckhardt") in view of Woman's Day Encyclopedia of Cookery, Family Circle Library of Cooking, Advertising Age, Saulsbury, and Slagg, further in view of Pichardo, Forbes, and Baltimore Morning Sun. Applicant respectfully traverses.

The Examiner points out that turbinado sugar is described in Institutional as a crystalline brown sugar. Applicant's understanding is that turbinado sugar is crystalline, but may be provided in a form that is free-flowing, or in a form that is not free-flowing. Applicant is admittedly rather far from his normal field of endeavor, here, but is attempting to be as clear and accurate as possible nevertheless. Nearly all forms of sugar that are available for purchase by consumers contain sugar that is crystalline at some scale (with the caveat that "powdered sugar" has a very small particle size). However, crystallinity is not the defining feature: the object of the invention is to overcome certain problems presented by those forms of sugar that are packaged in a moist, aggregative form, which includes without limitation most forms of "brown sugar" sold in the United States. Sugar that is not free-flowing, by definition, clumps together. In common usage, most consumer recipes that require brown sugar provide directions that appear to assume a form of brown sugar that is not free-flowing. To measure such sugar, one does not simply pour the sugar into a measuring cup, but must pack it or compress it in order to obtain an accurate measure. When preparing dough for baked goods, the packed brown sugar is then typically removed from the measuring cup and added to the other dry ingredients (e.g., flour, baking power, and the like): however, the brown sugar at this point is highly aggregated ("lumpy"), and requires considerable labor in order to disperse and mix the brown sugar evenly throughout the other dry ingredients.

The "pre-measured quantity" to which Applicant refers comprises the volume measures commonly used in cooking or baking recipes, for example ½ cup, ¼ cup, 1/3 cup, and the like

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(see the specification at page 3, lines 19-21, and "common measure" defined at page 2, lines 22-24). Typical American recipes specify dry ingredients (such as sugar and flour) by volume, rather than weight. In Applicant's experience, few cooks ever weigh ingredients: it is much quicker to measure an ingredient by volume for the typical consumer. One object of the invention is to provide brown sugar packaged in a manner that is immediately useful to the consumer in the kitchen, by providing brown sugar in pre-measured quantities that correspond to the amount of brown sugar that will be required in recipes (typically in "firmly packed" form). Note that there are many "pre-measured" quantities that would be of little use to the typical consumer – for example, the undersigned has never observed a recipe to require 5.403 cups of brown sugar, or 0.0003 cups, or 0.8 cups. Instead, typical recipes call for common fractions of a cup, such as $\frac{1}{2}$, $\frac{3}{4}$, $\frac{1}{4}$, $\frac{2}{3}$, and the like (without limitation): such are the "pre-measured" quantities to which the specification refers.

The degree of convenience achieved through the instant invention may not be fully appreciated by one who does not bake with brown sugar, at least occasionally. As the instant application has been published (20010046534) and the invention is no longer confidential, the Examiner is invited to consult with another Examiner, or friend or relative who bakes and uses brown sugar on a regular basis. While perhaps not an orthodox means of patent examination, it may lend immediate insight. It is the undersigned's experience that most people who cook, upon having the invention explained to them, immediately understand the substantial benefit and utility of the invention.

Alternatively, the Examiner is invited to try a simple experiment, using materials that are probably present in the Examiner's kitchen. Locate a box of conventional brown sugar, a quantity of white flour, and measuring cups in $\frac{1}{3}$ cup and 1 cup sizes. Measure one cup of flour into a bowl. Next, pack as much brown sugar as possible into the $\frac{1}{3}$ cup measure (do not substitute white or powdered sugar for brown sugar). Pack the sugar firmly into the measuring cup, until one has a solid block of brown sugar. Now, turn the sugar out of the measuring cup and into the flour, and attempt to disperse the solid lump of brown sugar throughout the flour using a fork. At this point, it may strike the Examiner that this method is a spectacularly

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inefficient way to measure ingredients: yet, this is the time-honored method for measuring brown sugar, which has probably existed unaltered for over a century. Note that this method is disclosed in several of the references cited by the Examiner, for example the Woman's Day Encyclopedia of Cookery, the Good Housekeeping Illustrated Cookbook, and the Better Homes & Gardens Complete Guide to Food and Cooking.

Turning now to the specifics of the cited references, Applicant notes that Institutional discloses turbinado sugar in 2 tsp packets, but does not disclose whether the sugar is free-flowing or not, nor whether the sugar is loosely-packed or firmly packed (or packed at all). In Applicant's experience, sugar provided in 1 or 2 tsp packets is intended for coffee or tea, and is generally provided in a free-flowing, unpacked, form. The reference thus fails to anticipate independent claims 1 and 19 (and by extension, the remaining dependent claims).

Burkhardt is similarly lacking in detail: although the reference discloses brown sugar in a ½ cup foil package, weighing 3.5 oz, it fails to disclose whether the brown sugar is free-flowing or packed, or whether the ½ cup size refers to the volume of the sugar when packed or loose. Burkhardt thus also fails to anticipate the claims.

It appears to Applicant that the remaining cited references teach either the proper method for measuring conventional brown sugar (i.e., by packing into a measuring cup firmly, so that the brown sugar holds its shape when turned out), or measuring devices, or rough correspondences between one pound of brown sugar and the corresponding volume of packed brown sugar.

Applicant does not claim to have been the first to observe that brown sugar clumps: this fact is well known to all who cook. It is also indisputable that a quantity of packed brown sugar corresponds to a particular weight of brown sugar. However, brown sugar is not packaged in a loose form according to the volume it will occupy when packed: this feature is not suggested anywhere in the prior art, to Applicant's knowledge.

The reason that recipes require one to pack brown sugar into a volume measure is, according to Applicant's understanding, that the amount of brown sugar (e.g., the weight) obtained when one does not pack the brown sugar will vary widely, depending on the type of

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brown sugar, its degree of moisture, etc. Only by packing brown sugar firmly into a volume measure will one obtain a reasonably consistent amount (weight) of brown sugar. One advantage of the claimed invention is that it provides greater consistency without the need to pack: by providing pre-measured, factory-filled packages in convenient sizes, the cook is relieved from the need to pack brown sugar into a volume measure, followed by attempted dispersal into dry ingredients. Thus, using the packages of the invention, one may simply open a brown sugar packet or packets of the appropriate size (for example, one might open a $\frac{1}{2}$ cup packet and a $\frac{1}{4}$ cup packet for a recipe that requires $\frac{3}{4}$ cup of brown sugar) and drop the brown sugar into the bowl. This convenience is absent when brown sugar is packaged by weight (e.g., 1 lb, 5 lbs, etc.). Such a system, and/or its advantages, are not disclosed in the cited references. Applicant notes specifically that the cited art does not appear to disclose a container comprising a plurality of packages containing differing amounts of brown sugar, e.g., as set forth in claims 9 and 10.

Rejection of Claim 24 under 35 USC §103(a)

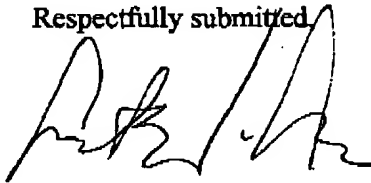
Claim 24 was rejected as obvious under §103(a) over the references applied above, further in view of Modern Packaging, Tremain, Sal Fizberg, Knoop et al., and Cozzie for the reasons set forth in the previous Office Action. Applicant respectfully traverses.

As set forth above, the cited art failed to disclose or suggest packaging non-freely flowing brown sugar in loose form, in individual packages containing amounts that correspond to the volume of packed brown sugar commonly required in recipes. Since claim 24 depends from independent claim 19, and claim 19 is nonobvious over the cited art, claim 24 is similarly nonobvious over the cited art.

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Applicant respectfully submits that the claims are presently in condition for allowance, and solicit such action. If there is any question or issue that can be resolved through a telephone discussion, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,



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